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'06 APR 27 AM :29

U.S. BANKRUPTCY COURT
DISTRICT OF NEVADAUNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY)	
Debtor)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,)	
Debtor)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED)	
FUND, LLC,)	
Debtor)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,)	
LLC,)	
Debtor)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,)	
Debtor)	
Affects:)	
<input checked="" type="checkbox"/> All Debtors)	
<input type="checkbox"/> USA Commercial Mortgage Co.)	
<input type="checkbox"/> USA Securities, LLC)	
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	DATE: 5/3/06
<input type="checkbox"/> USA Capital Diversified Trust Deed	)	TIME: 9:30 AM
<input type="checkbox"/> USA First Trust Deed Fund, LLC)	

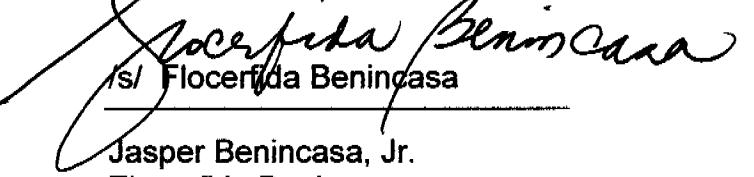
OPPOSITION TO MOTION FOR ORDER RE STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO) AND ORDER UNDER 11 USC §§ 105(A), 345, AND 363 APPROVING DEBTORS' PROPOSED CASH MANAGEMENT PROCEDURES AND INTERIM USE OF CASH IN ACCORDANCE WITH PROPOSED CASH BUDGET AND COUNTERMOTION FOR SEQUESTERING OR ALTERNATIVELY FOR RELEASE OF FUNDS AND FOR REVOCATION OF POWER OF ATTORNEY

COMES NOW JASPER BENINCASA, JR. AND FLOCERFIDA BENINCASA (hereafter "BENINCASA") file his Opposition to Debtor's Motion Re Setoff (Wells Fargo) (the "Stipulation") and for Order Under 11 USC §§ 105(a), 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget.

This Opposition and Countermotion for Sequestering or Alternatively for Release of Funds and for Revocation of Power of Attorney is based upon the Points and Authorities attached hereto.

Jasper Benincasa, Jr.
Flocerfida Benincasa


/s/ Jasper Benincasa, Jr.


/s/ Flocerfida Benincasa

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POINTS AND AUTHORITIES

Facts

The BENINCASA just had a baby born on April 15, 2006. The BENINCASA's intention was to invest their life savings for their child's future by compounding the interest earned pursuant to the Notes Secured by Deeds of Trust on Real Property. The Debtors collectively had fiduciary duties which included obtaining suitable borrowers with real property appraised in excess of the proposed loans and with a reasonable plan to repay the loans. Debtors charged origination fees or "points" to the borrowers and these origination fees or "points" are the primary income of Debtors. At no time were Debtors authorized to co-mingle with or use any funds intended for investment. Debtors were operating under a Power of Attorney which allowed them to collect the payments from the borrowers and to pay said funds to BENINCASA.

Debtors have no legal interest in the funds collected from borrowers. Debtors are not the Payees of the Notes nor are they the beneficiaries of the Deeds of Trust.

Debtors received \$110,000 of BENINCASA money represented by Check #1001 which was deposited into Debtor's account, specifically a Wells Fargo Account with the name of Commercial Mortgage Company Investors Trust Account with an account number 0465657146, on April 11th, 2006 and cleared the banking system on April 12th, 2006 which is one (1) day before Debtor's Petition. A copy of the final check is attached hereto as Exhibit "A".

The Law

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B. Escrow Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180.

Argument

The BENINCASA is the owner of funds placed into Trust prior to investment. It would appear that under NRS 645B, the Debtor cannot claim that any of "recent checks" represented by Exhibit "A" is a property of the estate. Indeed NRS 645B.165 through 180 make it very clear that the funds are trust funds very similar to those in an attorney's trust account and are given the same protection.

The law at NRS 645B.180 specifically states that "Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage broker or his mortgage agents." To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession.

The funds represented by Exhibit "A" do not belong to the Debtor and must be returned or at the very least subjected to sequestration from any assets of the Debtor so that they will not be expended for operations or subjected to claims against the Debtor or its agents.

The BENINCASA does not wish to be an investor with the Debtor and only want funds returned from the Wells Fargo Trust Account.

The transaction between BENINCASA and USA Capital was never completed; USA Capital stated that they were not taking anymore investors; BENINCASA is not an investor and not listed in the Matrix. BENINCASA is a family with their life savings in a Wells Fargo Trust account which is maintained by the Debtor.

Conclusion

Debtors' Motion should be denied, Wells Fargo's Motion should be denied, or limit setoff to accounts which do not hold Investor Trust Funds, and the Trust funds should be returned to BENINCASA since the Notes were never sent to be recorded.

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Exhibit "A"

Account: 1818239716
Check: 1001
Issued: April 11, 2006
Cleared: April 12, 2006
Amount: \$110,000.00
Deposited into: Wells Fargo Account
Account Name: Commercial Mortgage Company Investors Trust
Account
Account Number: 0465657146

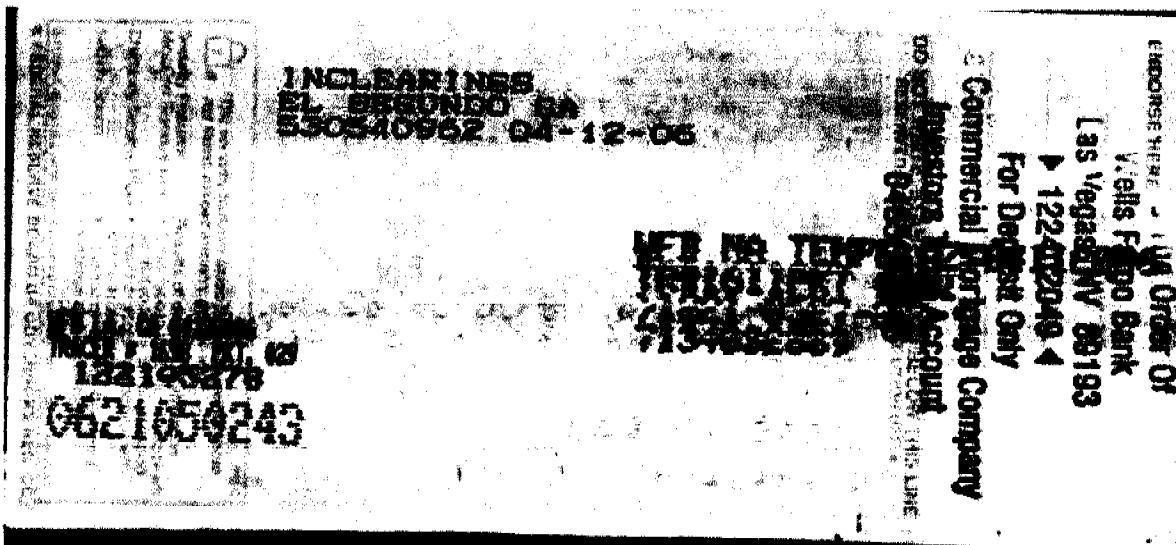
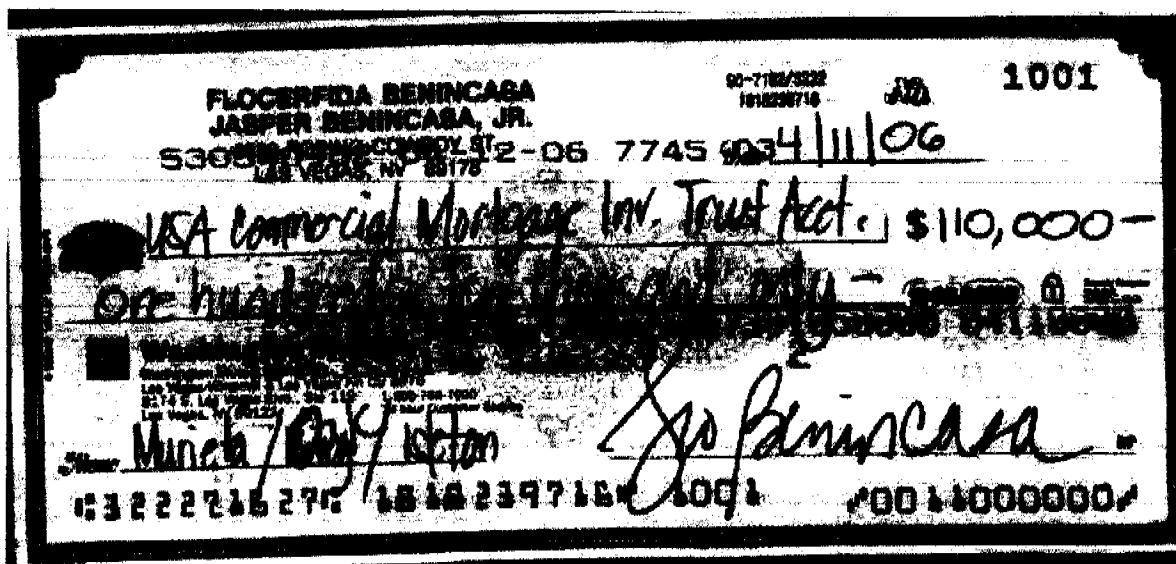


Exhibit "A"

Account: 1818239716
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